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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20443

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In the Matter of:

Grandfathered Short-Spaced  
FM Stations

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MM Docket No. 96-120  
RM-7651

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

**COMMENTS OF KELSHO RADIO GROUP, INC.**

The FCC's current rules governing grandfathered short-spaced FM stations can preclude modifications that would increase the service area of smaller, local stations. Accordingly, the Commission has proposed to "lift restrictions that unnecessarily impede flexibility" of these stations in *Grandfathered Short-Spaced FM Stations*, FCC 96-236, released June 14, 1994 (Notice of Proposed Rulemaking) (the "Notice"). In particular, the Notice contains three proposals: (i) amending the definition of interference; (ii) allowing grandfathered stations to modify their radio stations without regard to second- and third-adjacent channel stations; and (iii) eliminating the ability of such stations to reach agreements for mutual increases of service areas.

Kelsho Radio Group, Inc. ("Kelsho")<sup>1</sup>, the indirect owner of two grandfathered short-spaced FM stations in the Los Angeles market -- KACD-FM, Santa Monica and KBCD-FM, Newport Beach -- applauds the Commission's efforts to increase these stations' flexibility, but urges it to reconsider its proposal to preclude mutual agreements for facilities increases between grandfathered short-spaced stations. These agreements, if written and implemented

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<sup>1</sup> Kelsho Radio Group is the general partner of Kelsho Communications, L.P., the limited partner of KACD-FM, L.P. and KBCD-FM, L.P., respectively the licensees of KACD-FM and KBCD-FM.

according to Commission policy, can be the key to upgrading grandfathered short-spaced stations, and improving coverage and service to the public.

## **I. BACKGROUND**

KACD and KBCD each operate on 103.1 MHz (Channel 276A), serving parts of the Los Angeles radio market, the nation's second-largest. When Kelsho purchased these two grandfathered short-spaced<sup>2</sup> co-channel FM stations in 1991, they were operating as independent stations with extremely small service areas limited by the proximity between the two stations and by their proximity to other stations on first-, second- and third-adjacent channels.<sup>3</sup> Kelsho took these two small stations, and immediately began operating them as a single station, using synchronus transmission systems to simulcast the programming, virtually eliminating any interference between the stations and increasing their actual service area.

In order to compete in Los Angeles, however, both KACD and KBCD need to be upgraded, as they currently reach only 47% of the market. For the past five years, Kelsho has been trying to increase the stations' facilities, but has been blocked by the grandfathered short-spacing rules. In 1991, Kelsho filed applications with the FCC proposing to increase the power of KACD and KBCD and to increase the height of the KACD tower; these applications are still pending.<sup>4</sup> These modifications would allow the stations to compete with the full-powered stations in Los Angeles by entering the San Fernando Valley, an area that would by itself be the 12th-

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<sup>2</sup> KACD and KBCD are located just 59 km apart, about half the 115 km required for co-channel separation under normal circumstances.

<sup>3</sup> KACD is authorized at 3 kW with an antenna height of 81 meters (HAAT). KBCD is authorized at 2 kW with an antenna height of 91 meters (HAAT).

<sup>4</sup> FCC File Nos. BPH-911010IG (KACD), BPH-911010IH (KBCD). KFI, Inc., the licensee of KOST-FM, filed informal objections against both applications; Eleven-Fifty Corp., the licensee of KIIS-FM, filed an informal objection against the KBCD application. Accordingly, Kelsho is serving a copy of these Comments on both KFI and Eleven-Fifty Corp.

largest radio market in the country. The current grandfathered short-spacing rules simply will not allow these modifications: While KACD and KBCD can currently “agree” to increase their power towards each other, the modifications have been blocked by KACD’s proximity to two second-adjacent channel stations - even though the interference that would be caused to these stations is largely theoretical.<sup>5</sup>

The impact of the antiquated second and third adjacent channel rules on KACD/KBCD has been devastating. In the five years the modifications have been pending at the Commission, the stations have struggled to stay afloat. Kelsho has lost millions of dollars operating KACD/KBCD, and the stations have been through five format changes. In this new era of competition, with increasingly concentrated ownership,<sup>6</sup> the ability of smaller, locally-owned stations like KACD/KBCD to improve their facilities to reach more listeners is vital. The FCC’s rules should help, not hinder, the development of these stations.

## **II. THE COMMISSION SHOULD ELIMINATE SECOND- AND THIRD-ADJACENT CHANNEL SPACING REQUIREMENTS**

Kelsho fully supports the Commission’s proposal to eliminate the protection of second- and third-adjacent channel stations from the grandfathered short-spacing rules.<sup>7</sup> This amendment will provide short-spaced grandfathered stations with greater flexibility to upgrade their facilities to reach more viewers and provide better service.

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<sup>5</sup> KACD is 37.4 km from both KIIS-FM and KOST-FM, both licensed to Los Angeles. The FCC’s current rules require a separation of 69 km, and Section 73.213(a) of the Rules therefore prevents any modification of KACD.

<sup>6</sup> The acquisition of Infinity Broadcasting, for example, will give Westinghouse 6 radio stations in Los Angeles, with a combined 26% of the market’s radio revenue. See, “Mega-deal Rocks Radio,” *Broadcasting & Cable*, June 24, 1996 at 6-7.

<sup>7</sup> See Notice at ¶¶ 17-26. The Commission’s current separation rule for short-spaced grandfathered stations includes protection zones for second- and third-adjacent channels. See 47 C.F.R. § 73.213.

Given the vast number of FM stations currently operating across the country,<sup>8</sup> it is expected that a grandfathered short-spaced station in a large community will be located within the 1 mv/m contour of a second- or third-adjacent channel, thereby precluding *any* modifications to that station.<sup>9</sup> As the Commission has recognized, the interference -- actually, substitution of service -- that would be caused by such modifications would be minimal, limited to the immediate area of the transmitter.<sup>10</sup>

The KACD/KBCD example is instructive. The Commission's current rules protect two full-power FM stations from very minimal interference at the cost of preventing KACD/KBCD from competing more fully in the Los Angeles market. The upgrade of KACD and KBCD has been blocked for five years by the proximity of stations KIIS-FM and KOST-FM, both second-adjacent stations to KACD. As shown in the attached technical statement, the predicted interference from KACD to either KIIS or KOST would be insignificant, and confined to the area immediately around the KACD transmitter site in the Baldwin Hills section of Santa Monica.<sup>11</sup> Eliminating the unnecessary second- and third-degree spacing requirement will allow these modifications to be made, service to be improved, and the public interest to be served.

### **III. THE COMMISSION SHOULD CONTINUE TO ALLOW MUTUAL INCREASES BY GRANDFATHERED SHORT-SPACED STATIONS**

Ironically, the Commission's third proposal in the *Notice* -- to abolish mutual short-spacing agreements -- would defeat the KACD/KBCD modifications otherwise permitted by the elimination of the second- and third-adjacent channel separation rules. The Commission's

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<sup>8</sup> The FCC estimates that 5300 FM stations were operating in 1995. *Notice* at ¶ 23.

<sup>9</sup> *Id.* at ¶ 18.

<sup>10</sup> *Id.* at ¶ 24.

<sup>11</sup> See Technical Statement of duTriel, Lundin & Rackley, attached hereto as Exhibit A.

confident statement that it can it can “eliminate the reliance on agreements without any harmful effect on applicants, other stations, or the public”<sup>12</sup> is belied by the proposal’s impact on KACD/KBCD.

The current FCC policy -- established more than twenty years ago -- allows two grandfathered short-spaced stations to agree to increase the power and height of both facilities (though not to change transmitter sites) upon a showing that the public interest would be served by increased service areas and populations as compared to the increased interference. The Commission proposes to remove this policy because some grandfathered short-spaced stations have apparently “invoked [the policy] to justify unilateral modifications, including site changes.”<sup>13</sup> The Commission goes on to assert that the “policy is no longer useful for the extremely limited number of co-channel and first-adjacent channel grandfathered stations proposing to increase facilities at their licensed site.”<sup>14</sup>

The Commission has provided no good reasons to discard the entire mutual agreement policy. First, the policy has been in place for more than two decades, allowing grandfathered stations to serve the public interest by *mutually* increasing service areas of less than full-market stations. The *Notice* cites no evidence of pervasive, or even significant, interference problems resulting from site moves effected pursuant to mutual agreements.

Second, eliminating the mutual agreement policy throws the baby out with the bathwater. The Commission should prevent abuses not by abrogating the entire policy, but by

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<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at ¶ 30.

<sup>14</sup> *Id.*

enforcing it according to its terms and dismissing applications that propose unilateral modifications or site changes to grandfathered short-spaced facilities.

Eliminating the policy would not, in fact, be without is harmful effects on applicants or the public. For example, without the ability to reach mutual agreements, KACD and KBCD, will be unable to increase the power of both stations and the height of the KACD tower and thereby improve its service to the public. The new interference rules proposed in the *Notice* would not permit these power and height increases, as the modifications would likely not meet the proposed d/u ratio.<sup>15</sup>

#### **IV. THE COMMISSION SHOULD ALLOW MUTUAL INCREASES BY COMMONLY-HELD GRANDFATHERED SHORT-SPACED STATIONS**

Should the Commission ultimately decide to abandon its mutual agreement policy, it should continue to permit commonly-held grandfathered short-spaced stations to enter into mutual “agreements” to increase their facilities. A common owner of two short-spaced radio stations is able, with the appropriate technology, to synchronize the transmissions, eliminating the interference that would result from different programming being broadcast from each station. As a result, two low-powered stations with necessarily small service areas become a full-service radio station with a vastly improved service area to compete in today’s radio environment.<sup>16</sup>

Under the FCC’s rules, however, this is only possible if the stations can enter into a mutual “agreement” to allow for the technical “interference” that is created by the short

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<sup>15</sup> *Id.* at ¶ 14.

<sup>16</sup> While Kelsho is not aware of any other commonly-held grandfathered short-spaced stations other than its own KACD/KBCD, such a combination has only become relatively attractive since the recent lifting of the radio duopoly rule. The obvious benefits of common ownership may very well encourage others to combine grandfathered short-spaced stations.

separation distances. The abolition of the Commission's mutual agreement policy would therefore have the unintended effect of precluding such upgrades.

## V. CONCLUSION

Consistent with the prevailing spirit of deregulation in Washington, the Commission has proposed to remove unnecessary limits on grandfathered short-spaced FM stations. The proposed reform of the current rules goes too far, however, eliminating the agreement policy that has for more than two decades allowed such stations to perform mutual upgrades that serve the public interest. The Commission should retain -- and perhaps begin strictly enforcing -- this agreement policy, while adopting its other proposed revisions to Section 73.213 of its Rules.

Respectfully submitted,

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July 22, 1996

CERTIFICATE OF SERVICE

I, Bonnie B. Farrish, hereby certify that I have this 22nd day of July, 1996, served copies of the forgoing Comments of Kelsho Radio Group, Inc. via United States mail, postage prepaid, to the following:

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## EXHIBIT A

TECHNICAL EXHIBIT  
SUPPORTING THE COMMENTS OF  
KELSHO COMMUNICATIONS, LP

This Technical Statement supports the comments of Kelsho Communications, LP (Kelsho) submitted in response to the Federal Communications Commission (FCC) Notice of Proposed Rule Making (NPRM) in MM Docket No. 96-120. The NPRM concerns proposed modifications to the FCC's rules with regard to grandfathered short-spaced FM stations (Section 73.213 of the FCC rules).

Kelsho is the licensee of FM station KACD on channel 276A (103.1 MHz) at Santa Monica, California. Station KACD is presently licensed (BLH-850419KR) to operate with a directional antenna (DA) system having a maximum effective radiated power (ERP) of 3 kilowatts (kW). The antenna height above average terrain (HAAT) is 81 meters. Station KACD also has an application pending (BPH-911010IG) to change the directional antenna system, and increase the ERP and antenna HAAT at the present site. The proposed maximum ERP is 4.5 kW and the antenna HAAT is 99 meters.

The pending KACD application has been "blocked" from FCC processing for nearly 5 years due to grandfathered second and third adjacent channel short-spacings with super powered Class B stations KIIS(FM) on channel 274B (102.7 MHz) and KOST(FM) on channel 278B (103.5 MHz), both at Los Angeles, California. The separation from the KACD site to KIIS and KOST is 37.4 kilometers. The FCC's normal minimum separation requirement is 69 kilometers (Section 73.207 of FCC rules). The KACD pending application included a showing with regard to the KIIS and KOST short-spacings.

The FCC's NPRM (MM Docket No. 96-120) proposes to eliminate the second and third adjacent channel interference criteria contained in Section 73.213(a) of the rules for grandfathered short-spaced FM stations. The reasoning is basically that the predicted interference is minimal and it will permit greater flexibility in making changes. A showing demonstrating no significant change in interference for the KACD proposed operation is provided.

The FCC short-spaced site rules (Section 73.215) specify a desired-to-undesired (D/U) interference ratio of -40 dB for second and third adjacent channel operations. There is no predicted overlap between the KIIS and KOST predicted 100 dBu (100 mV/m) contours and the KACD present and proposed 60 dBu (1 mV/m) contours. Hence, KACD receives no interference. However, the KACD transmitter site is within the KIIS and KOST predicted 54 dBu contours. Therefore, KACD causes predicted interference to KIIS and KOST.

Figure 1 is a portion of a large scale (1/24,000) USGS topographic map showing the KACD site. The predicted KIIS field strength at the KACD site is approximately 79.5 dBu (9.44 mV/m). The undesired (interfering) field strength from KACD would be 119.5 dBu (944 mV/m). Since this high KACD field strength value is beyond the FCC's FM propagation curves, free space calculations have been made for the KACD 119.5 dBu contours. As shown, there is only a very small change in the area of predicted KACD interference to KIIS. Furthermore, the predicted interference is confined to a small area in the immediate vicinity of the KACD transmitter site in the Baldwin Hills.

Figure 2 is a similar map showing the predicted KOST 82.35 dBu (13.1 mV/m) contour through the KACD transmitter site. The present and proposed KACD undesired 122.35 dBu (1310 mV/m) contours are shown. As with Figure 1, there is an insignificant change in the area of predicted KACD interference to KOST.

In general, the FCC could eliminate second and third adjacent channel interference restrictions for grandfathered short-spaced FM stations without creating any significant interference concerns.

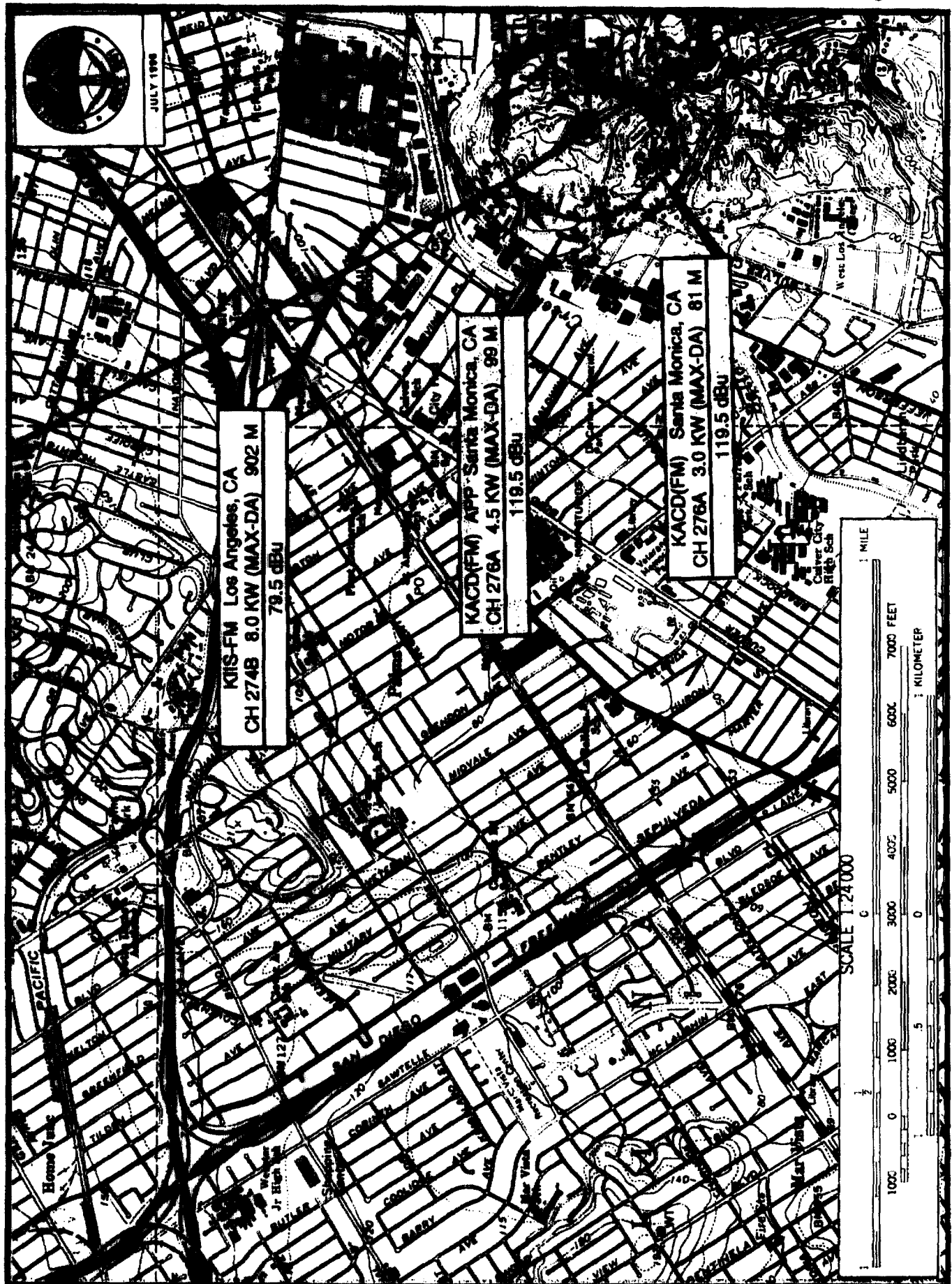
  
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July 19, 1996

Figure 1



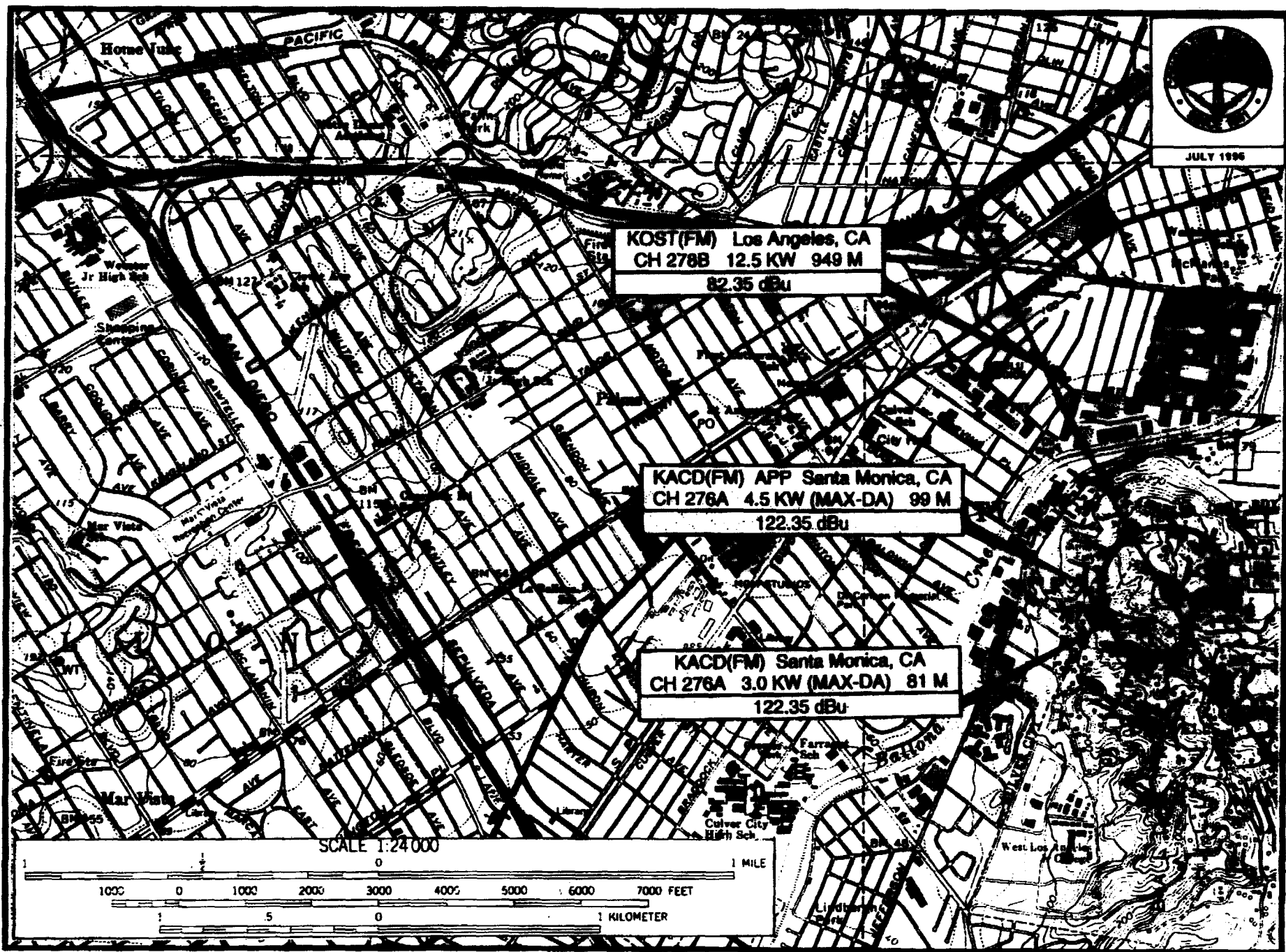


Figure 2